

Court of Appeals
Division two
of the state of Washington


State of Washington
Respondent,
V.
John burns
Appellant.

NO. 44145-4-11
Statement of Additional
Grounds for review

FILED
COURT OF APPEALS
DIVISION II
2013 MAY 13 AM 9:11
STATE OF WASHINGTON
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I, John burns, have received and reviewed the opening
brief prepared by my attorney. Summarized below are the
ground for review that are not addressed in that
brief. I understand the court will review this
Statement of additional Grounds for review when
my appeal is considered on the merits.

Date: 5/7/13

Signature: 

ADDITIONAL GROUND 1

One of the statutory means by which a kidnapping in the first degree can be established is proof that the kidnapping occurred with the intent to facilitate commission of any felony or flight thereafter. (See RCW 9A.40.020 (1)(b)). In my case the felony is Robbery. Still unresolved is the question of whether in a situation where there are several predicate felonies charged, the jury must be unanimous in determining which felony the defendant intended to facilitate. At the very least, the court should consider submitting a special interrogatory to the jury to determine what predicate felonies the jury satisfied were proven beyond a reasonable doubt. See State v. Maupin, (reversal required when substantial evidence did not support one of two predicate offenses for a felony murder charge and when no special interrogatory was provided for the jury.) Because the State has to be word specific as to whom I intended to rob according to the kidnapping to-convict instructions element 2 and they were not word specific; now that I have gotten my robberies reversed due to insufficiency of the evidence due to the jury being instructed incorrectly. The jury found me guilty of those kidnappings because of those robberies. Now in the beginning I was found not guilty of the kidnappings simply because element number 2 of kidnapping would not have been met.

Also in State v. Maupin, the trial court declined to provide

the jury with a special verdict form which would have shown which one of the underlying felonies the jury relied upon in reaching its verdict. "There is no way for this court to know whether the jury based its verdict on a unanimous determination Mr. Maupin committed 2nd degree kidnapping."

In my case there is no way for the court to know whether the jury based its verdict on a unanimous determination of the only robbery I have left and not the 3 robberies I got reversed because of an incorrect jury instruction.

CONCLUSION

The trial court erred in not providing the jury with a special verdict form which would have shown which one of the underlying felonies the jury relied upon. As a result, this court should reverse and remand for a new trial.

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ADDITIONAL GROUND - 2